

State of California
BOARD OF EQUALIZATION
USE FUEL TAX REGULATIONS

Regulation 1318. VENDOR'S LIABILITY FOR THE TAX.

Reference: Sections 8651, 8652, 8732, 8732.5, 8733, Revenue and Taxation Code.

(a) GENERAL. The vendor is required to collect and is liable for the amount of the tax on fuel sold and delivered into fuel tanks of motor vehicles, except any vehicle (a) operated by the Government of the United States or any instrumentality thereof, (b) operated interstate as authorized by regulation 1319, (c) operated by a user who qualifies for the exemption provided in Revenue and Taxation Code section 8655 as authorized by regulation 1319, or (d) operated exclusively on private property as authorized by regulation 1320. A vendor is not authorized to collect the tax on fuel delivered into a storage container other than a vehicle fuel tank. The amount of tax required to be collected constitutes a debt owed by the vendor to the state.

Except as may otherwise be provided by the board, a vendor who sells and delivers fuel into the fuel tank of a motor vehicle shall collect the tax notwithstanding that the user may claim exemption from the tax in his returns to the board for any nontaxable use of the fuel.

As respects a vendor's tax reporting, the tax is deemed to have been collected at the time of the sale irrespective of when payment for the amount to the invoice, including the tax, is received by the vendor. Failure to collect the tax from the purchaser (user) does not relieve the vendor from his liability to pay to the state the amount of the tax required to be collected, except that bad debt losses are deductible under circumstances described in section 8732.5 of the Revenue and Taxation Code and regulation 1331.6.

(b) FUEL SOLD THROUGH KEYLOCK OR OTHER UNATTENDED MECHANISMS. When fuel is sold through a keylock mechanism or other unattended mechanism it shall be presumed that the vendor delivered the fuel into the fuel tank of a motor vehicle and the vendor must collect the tax from the user. Farm and construction equipment are motor vehicles if they are suitable for operation on the highway. This includes most equipment running on rubber tires. Section 8652 of the Revenue and Taxation Code provides an exemption to farm and construction equipment users, but not to vendors delivering fuel into the fuel tanks of such vehicles. Customers fueling such equipment as rubber-tired backhoes, road graders, or farm tractors must pay the use fuel tax to the vendor when delivery is made through keylock pumps even if the equipment is hauled into the station on a trailer and the ultimate use of the fuel is exempt.

The presumption that fuel sold through a keylock or other unattended mechanism is delivered into the fuel tank of a motor vehicle shall be rebutted and the vendor shall not collect the tax if the user certifies in writing to the vendor that all fuel delivered to him through a specific mechanism will be delivered into bulk containers. If a customer puts fuel into the fuel tank of a motor vehicle and places fuel into drums or other bulk containers at the same keylock station, the vendor should assign the customer two meter registers. The customer then may furnish the vendor with a certificate that all fuel delivered through a specified meter register will be delivered into bulk containers. Regulation 1320 may not be applied to fuel deliveries through keylock or other unattended mechanisms unless the mechanism is located where the vehicle is operated exclusively off the highway. Regulation 1319 is applicable to keylock deliveries only in situations specified in that regulation and to the same extent as if the vendor made the delivery into the fuel tank of the vehicle personally.

(c) SALES TO PERSONS WHO PAID THE ANNUAL FLAT RATE TAX. Any vendor who sells and delivers liquefied petroleum gas, liquid natural gas or compressed natural gas into the fuel tank of a vehicle with respect to which the owner or operator has paid the annual flat rate fuel tax and which bears the current year's identification emblem provided for in regulation 1325 is not required to collect the tax with respect to such fuel. The vendor must retain for each sale or delivery claimed to be exempt records showing (a) the type and quantity of fuel sold or delivered, (b) the date of the sale or delivery, (c) the serial number of the identification emblem affixed to the vehicle pursuant to regulation 1325 and (d) the license number of the vehicle.

Regulation 1318. (Continued)

(d) OVERCOLLECTIONS BY VENDOR. If with respect to fuel tank deliveries the vendor collects from any user a greater amount of tax than that which is required to be collected, he shall remit the full amount collected to the board, since the user is entitled to a credit or refund from the state. If the vendor improperly collects the tax on deliveries of fuel into storage facilities other than vehicle fuel tanks, the amount of tax so collected shall be refunded by the vendor to the user purchasing the fuel.

History: Effective October 1, 1959.

Amended effective December 12, 1963.

Amended effective October 12, 1966.

Amended December 8, 1970, effective January 15, 1971.

Amended November 19, 1975, effective January 1, 1976.

Amended February 6, 1980, effective March 29, 1980. Added subsection letters and headings: (a) is former first, fifth and fourth paragraphs; (b) is a new subsection; (c) is former second paragraph; and (d) is former third paragraph.